

FCC MAIL SECTION
Before the
Federal Communications Commission
Washington, D.C. 20541
SEP 21 4 15 PM '94

MM Docket No. 93-146
DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b), RM-8258
Table of Allotments, RM-8333
FM Broadcast Stations, RM-8343
(Diamond City, Arkansas,
and Halfway, Humansville and
Ozark, Missouri)¹

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 12, 1994; Released: September 20, 1994

By the Chief, Policy and Rules Division:

1. In response to a request filed jointly by Ozark Mountain Broadcasting, Inc. ("OMB") and KYOO Broadcasting Company ("KBC"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 4750 (1993). OMB proposes substitution of Channel 225C2 for Channel 225A at Ozark, Missouri, and modification of the construction permit for Station KZPF(FM) accordingly. KBC requests substitution of Channel 256A for Channel 226A at Half Way, Missouri, and modification of the construction permit for Station KYOO-FM to specify operation on Channel 256A. OMB and KBC filed joint comments restating their support for the proposed substitutions at Ozark and Half Way. Counterproposals were filed by Lake Broadcasting ("Lake") and Missouri Radio, Inc. ("MRI").² Reply comments were filed by OMB, KBC, MRI and Lake. On March 3, 1994, Lake Broadcasting and Missouri Radio, Inc. withdrew their respective counterproposals. No further consideration will be given to the allotment of an FM channel at Diamond City, Arkansas, or Humansville, Missouri.³ Accordingly, comments filed in response to the counterproposals need not be considered.

2. After consideration of the information filed in this proceeding, we believe the public interest would be served by the substitution of Channel 225C2 for Channel 225A at Ozark, Missouri, and modification of the construction permit for Station KZPF(FM) accordingly. Channel 225C2 can be allotted to Ozark, Missouri, in compliance with the Commission's minimum distance separation requirements at the site specified by OMB.⁴ The allotment at Ozark currently conflicts with the licensed site for Station KREB, Channel 225A, Huntsville, Arkansas, and the construction permit for Station KXBR, Channel 228A, Greenfield, Missouri. The authorization for each channel was modified in previous proceedings, and the substituted channels are fully spaced to OMB's proposal.⁵ Therefore, grant of a license for Channel 225C2 at Ozark may be withheld until Station KREB, Huntsville, is licensed on Channel 258A and Station KXBR, Greenfield, is licensed on Channel 299A. We shall modify the construction permit for Station KZPF(FM), Ozark, Missouri to specify operation on Channel 225C2 in accordance with Section 1.420(g) of the Commission's Rules. Channel 256A can be allotted to Half Way, Missouri, in compliance with the Commission's spacing requirements at KBC's specified site.⁶ We shall modify the construction permit for Station KYOO-FM at Half Way, Missouri, to specify operation on Channel 256A.⁷

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 7, 1994**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

Community	Channel No.
Half Way, Missouri	256A
Ozark, Missouri	225C2

4. IT IS FURTHER ORDERED, That the Secretary of the Commission Shall Send by Certified Mail, Return Receipt Requested, a copy of this *Report and Order* to the following:

KXBR, Inc. Station KXBR 19 East 200 South Salt Lake City, Utah 84111	Vekony Communications, Inc. Station KREB 280 N. College, #125 Fayetteville, Arkansas 72701
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¹ The communities of Diamond City, Arkansas, and Humansville, Missouri, have been added to the caption.

² Public notice of the counterproposal filed by Missouri Radio, Inc. was given on September 16, 1993, Report No. 1965 (RM-8333). The counterproposal filed by Lake Broadcasting was put on public notice on September 23, 1993, Report No. 1970 (RM-8343). MRI requested the allotment of Channel 256A to Humansville, Missouri, as that community's first local service. Lake proposed the allotment of Channel 224A to Diamond City, Arkansas, as that community's first local service.

³ Ozark Mountain Broadcasting, Inc. and KYOO Broadcasting Company filed comments in compliance with Section 1.420(j) of the Commission's Rules indicating no consideration will be paid to Lake Broadcasting (Diamond City) or Missouri Radio, Inc. (Humansville) in connection with the withdrawal of their coun-

terproposals from this proceeding.

⁴ The coordinates for Channel 225C2 at Ozark are 36-58-45 and 93-26-38.

⁵ The *Report and Order* in MM Docket 92-49 modified the license for Station KREB, Huntsville, to specify operation on Channel 258A and modified the construction permit for Station KXBR, Greenfield, to specify operation on Channel 299A. See 8 FCC Rcd 734 (1993).

⁶ The coordinates for Channel 256A at Half Way are 37-44-35 and 93-15-00.

⁷ The construction permit for Station KYOO-FM expired on June 9, 1993, and was cancelled on March 3, 1994. However, on August 25, 1994, the construction permit was reinstated and an extension granted. The construction permit expires in February, 1995.

5. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the construction permit for Station KZPF(FM), Ozark, Missouri, IS MODIFIED to specify operation on Channel 225C2, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the permittee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the construction permit for Station KYOO-FM, Half Way, Missouri, IS MODIFIED, to specify operation on Channel 256A subject to the following conditions:

- (a) Nothing contained herein shall be construed as authorizing any change in permit BPH-900820MK except for the channel as specified above. Any changes, except those specified require prior authorization pursuant to an application for construction permit (FCC Form 301).
- (b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BPH-900820MK, except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

7. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Ozark Mountain Broadcasting, Inc., permittee of Station KZPF(FM) is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade.

8. IT IS FURTHER ORDERED, That the counterproposals filed by Missouri Radio, Inc. (RM-8333) and Lake Broadcasting (RM-8343) ARE DISMISSED.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Chief, Policy and Rules Division
Mass Media Bureau